

Internal Revenue Service

Number: **202017026**

Release Date: 4/24/2020

Index Number: 501.00-00, 507.00-00,
4940.00-00, 4941.00-00,
4942.00-00, 4944.00-00,
4945.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:EEE:EOET:EO3

PLR-117441-19

Date:

January 28, 2020

Foundation =
Year =
X =
Y =
Z =
State =

Dear :

This is in response to the letter dated July 23, 2019, and additional submissions dated October 15, 2019, and December 10, 2019, in which Foundation's counsel requested on behalf of Foundation rulings under sections 501, 507, 4940, 4941, 4942, 4944, and 4945 of the Internal Revenue Code.

BACKGROUND

Foundation is recognized as an exempt organization described in section 501(c)(3) and classified as a private foundation under section 509(a). Foundation represents that it is not a private operating foundation within the meaning of section 4942(j)(3). Foundation's founder, who passed away in Year, was a substantial contributor to Foundation within the meaning of section 507(d)(2).

Foundation's board of directors is composed of X people. Y of the directors are the founder's living children and the other director is unrelated to the founder and is

Foundation's primary attorney. The founder's deceased daughter was also a director of Foundation prior to her death.

Due to disagreements on how to run Foundation, Foundation's directors would like to divide Foundation's assets evenly among X separate transferees that either are or will be organizations described in section 501(c)(3) and private foundations described in section 509(a) (Transferees). Foundation will receive no consideration for the amounts transferred to the Transferees, and none of the amounts transferred will be out of current income.

Z of the Transferees already exist. The other Transferees will be newly-formed private foundations. Foundation represents that each of the Transferees are effectively controlled (within the meaning of section 1.507-3(a)(2)(ii)) directly or indirectly, by the same persons who effectively control Foundation.

Foundation will pay all reasonable expenses in connection with forming the new Transferees and in obtaining recognition of their tax-exempt status. Foundation represents that the legal, accounting, and other expenses paid by Foundation in connection with this ruling request, in creating the newly formed foundations, and in effectuating the proposed transfers are reasonable, necessary, and consistent with ordinary business care and prudence.

After it transfers its assets to the Transferees, Foundation will terminate its private foundation status and its existence as a nonprofit corporation under State law. Foundation will notify the IRS of its termination no earlier than one day after the proposed transfers have been made.

Foundation represents that each of the Transferees will operate and maintain its own status as a tax-exempt private foundation described in section 509(a) after the transfer is made. Foundation also represents that it has not committed any willful repeated acts (or failures to act), or any willful and flagrant act (or failure to act), giving rise to liability under Chapter 42. Finally, Foundation represents that it does not have, and will not have at the time of the proposed transfers, any outstanding transfers which require expenditure responsibility under section 4945(d)(4)(B).

RULINGS REQUESTED, LAW, AND ANALYSIS

Requested Rulings 1 and 2:

- 1) *The proposed transfers will qualify as a transfer of assets described in section 507(b)(2) and are not transfers described in section 507(a).*
- 2) *None of the transferee foundations will be treated as newly created organizations as a result of the proposed transfers for purposes of applying section 507(b)(2) and Chapter 42 to Foundation.*

Section 507(a) provides that, except as provided in subsection (b), the status of any organization as a private foundation shall be terminated only if (1) it notifies the Secretary of its intent to accomplish such a termination, or (2) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to liability for tax under Chapter 42, and the Secretary notifies such organization that it is liable for the tax imposed by section 507(c), and either such organization pays the tax (or any portion not abated under section 507(g)) or the entire amount of such tax is abated under section 507(g).

Section 507(b)(2) provides that in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization. A transfer described in section 507(b)(2) is referred to as a "section 507(b)(2) transfer."

Treas. Reg. Sec. 1.507-3(c)(1) describes the terms "other adjustment, organization, or reorganization" as including any significant distribution of assets to one or more private foundations, other than transfers for full and adequate consideration or distributions out of current income. The term "significant disposition of assets to one or more private foundations" is defined by Treas. Reg. Sec. 1.507-3(c)(2) as any disposition or series of dispositions where the aggregate value transferred is 25 percent or more of the fair market value of the net assets of the transferor foundation at the beginning of the taxable year.

Foundation will transfer all of its assets to the Transferees. Foundation will not receive any consideration for the amounts transferred, and none of the amounts will be out of current income. Accordingly, provided that all of Foundation's assets are transferred to the Transferees in the same year, Foundation's proposed transfer will constitute a significant disposition of assets that will qualify as a section 507(b)(2) transfer.

Treas. Reg. Sec. 1.507-4(b) provides, in part, that a private foundation that makes transfers described in section 507(b)(2) is "not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable." Foundation has represented that it has not and will not notify the Secretary of any intent to terminate its status as a private foundation within the meaning of section 507(a)(1) before the transfers take place and that it has not either committed willful repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which gives rise to tax under Chapter 42 within the meaning of section 507(a)(2).

Therefore, because the proposed transfers will be described in section 507(b)(2) (provided that all of Foundation's assets are transferred to the Transferees in the same year) and because Foundation will not give the notice described in section 507(a)(1) or be described in section 507(a)(2), Foundation's proposed transfer of assets to the

Transferees will not be described in section 507(a), and the Transferees will not be treated as newly created organizations for this purpose.

The conclusion that the Transferees will not be treated as newly created organizations is reached herein only for purposes of responding to Foundation's request for the ruling that the proposed transfer will not subject Foundation to the tax imposed by section 507(c) because the transfer will be described in section 507(b)(2). Section 6110(j)(3) provides, in part, that unless "the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent." For this purpose, section 6110(b)(1)(A) provides that a "written determination" generally means "a ruling, determination letter, technical advice memorandum, or Chief Counsel advice." The request for rulings to which this letter is directed was submitted by Foundation, not by the Transferees. Accordingly, the Transferees may not use or cite this letter as precedent. See *also*, section 11.02 of Rev. Proc. 2019-1, 2019-1 I.R.B. 1.

Requested Ruling 3: *The proposed transfers will not give rise to gross investment income and will not result in the imposition of tax under section 4940.*

Section 4940(a) imposes an excise tax on a private foundation's net investment income for the taxable year. Section 4940(c)(1) defines net investment income as the amount by which the sum of the gross investment income and the capital gain net income exceeds the deductions allowed under section 4940(c)(3). Section 4940(c)(2) provides, in part, that for purposes of section 4940, the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans, and royalties. Section 4940 does not define "capital gain net income," but section 4940(c)(1) provides that net investment income is generally determined under the principles of subtitle A.

Foundation proposes to distribute all of its assets to the Transferees. Foundation will not receive any form of consideration for the proposed transfers, and thus will receive no net income. Accordingly, the proposed transfers to the Transferees will not result in the production of net investment income (including capital gains from a taxable sale or disposition of property) and will not result in the imposition of tax under section 4940 on Foundation.

Requested Ruling 4: *Foundation will not be deemed to have engaged in an act of self-dealing under section 4941 in effectuating the proposed transfers and the transaction contemplated herein, including the formation of the newly formed organizations and Foundation's payment of reasonable expenses to effect the transactions, provided the Transferees are recognized by the IRS as organizations described in section 501(c)(3) and exempt from tax under section 501(a).*

Section 4941(a)(1) imposes taxes on each act of self-dealing between a disqualified person and a private foundation. Taxes are imposed on both the self-dealers involved in an act of self-dealing and on any foundation managers who

knowingly participate in an act of self-dealing. Even though section 4941 does not impose a tax on a private foundation when an act of self-dealing occurs, a foundation with respect to which there has been an act of self-dealing is required to report it to the IRS on its annual information return, which is the Form 990-PF in this case.

Section 4941(d)(1)(E) provides that the term “self-dealing” includes any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation. Section 4946(a)(1) defines the term “disqualified person.” Treas. Reg. Sec. 53.4946-1(a)(8) provides that the term “disqualified person” does not include organizations that are exempt under section 501(c)(3). Thus, the Transferees, by definition, will not be disqualified persons with respect to Foundation.

In situation 1 in Rev. Rul. 2002-28, 2002-1 C.B. 941, P is recognized as exempt from federal income tax under section 501(c)(3) and is classified as a private foundation under section 509(a). Pursuant to a plan of dissolution, after satisfying all of its outstanding liabilities, P distributes all of its remaining assets in equal shares to X, Y, and Z. Rev. Rul. 2002-28 states, in part, that the transfers in question are to section 501(c)(3) organizations, which are not treated as disqualified persons for purposes of section 4941. Rev. Rul. 2002-28 concludes that the transfers do not constitute self-dealing transactions and are not subject to tax under section 4941(a)(1). Additionally, in situation 2 of Rev. Rul. 2002-28, the trustees of a charitable trust create a section 501(c)(3) private foundation and then the trust transfers all of its assets to the private foundation; the ruling provides that the transaction does not constitute self-dealing and is not subject to tax under section 4941.

Foundation’s proposed transfer of assets to the Transferees, including the formation of the newly formed organizations and Foundation’s payment of reasonable expenses related to the transaction, will not constitute an act of self-dealing, provided the Transferees are recognized by the IRS as organizations described in section 501(c)(3) and exempt from tax under section 501(a).

With respect to the request for a ruling, this letter is directed to Foundation, and not to the Transferees or any disqualified persons with respect to Foundation or the Transferees. As previously stated, section 6110(j)(3) provides, in part, that unless “the Secretary otherwise establishes by regulations, a written determination may not be used or cited as precedent.” Accordingly, neither the Transferees nor any disqualified persons with respect to Foundation or the Transferees may use or cite this letter as precedent. See section 11.02 of Rev. Proc. 2019-1, *supra*.

Requested Ruling 5: *The proposed transfers will not constitute investments that jeopardize the charitable purposes of Foundation under section 4944.*

Section 4944(a)(1) imposes a tax on any amount invested by a private foundation in a manner that jeopardizes the carrying out of any of the foundation's exempt purposes.

Neither section 4944 nor the regulations thereunder define “invest” or “investment.” However, in the context of applying sections 507(b)(2) and 4944 to a transfer of all of a private foundation’s assets to one or more other private foundations, Rev. Rul. 2002-28, *supra*, states that section 507(b)(2) transfers do not constitute investments for purposes of section 4944.

Accordingly, the proposed transfers will not constitute investments that jeopardize Foundation's exempt purposes and will not be subject to tax under section 4944(a)(1).

Requested Ruling 6: *Foundation’s payment of legal, accounting, and other expenses in connection with the ruling request, creating the newly-formed organizations, and in effectuating the proposed transfers will not constitute taxable expenditures under section 4945. All such expenses will be considered qualifying distributions under section 4942.*

Section 4942(g)(1)(A) and Treas. Reg. Sec. 53.4942(a)-3(a)(2)(i) provide, in part, that the term “qualifying distribution” means any amount, including “reasonable and necessary administrative expenses,” paid to accomplish one or more purposes described in section 170(c)(1) or (2)(B). Section 170(c)(2)(B) lists the following purposes: “religious, charitable, scientific, literary, or educational purposes, or testing for public safety, to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.” These purposes are purposes listed in section 501(c)(3). Thus, a grant by a private foundation to another organization described in section 501(c)(3) ordinarily is an amount paid to accomplish a purpose described in section 170(c)(2)(B) and may be considered to be a qualifying distribution.

Foundation represents that the legal, accounting, and other expenses paid by Foundation in connection with this ruling request, in creating the newly formed foundations, and in effectuating the proposed transfers are reasonable, necessary, and consistent with ordinary business care and prudence. Moreover, provided the amounts will be paid from Foundation to another organization described in section 501(c)(3) (presumably the Transferees), the amounts will be paid to accomplish one or more purposes described in section 170(c)(2)(B). Therefore, such expenses will be considered qualifying distributions under section 4942.

Section 4945(a) imposes a tax on each “taxable expenditure” of a private foundation. Section 4945(d)(5) provides that the term “taxable expenditure” includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170(c)(2)(B). Treas. Reg. Sec. 53.4945-6(b)(2) provides that legal, administrative, and other expenses incurred by a private foundation are not taxable expenditures if the foundation can demonstrate that such expenses were paid or incurred in the good faith belief that they were reasonable and that the payment or incurrence of such expenses in such amounts was consistent with ordinary business

care and prudence. Foundation represents that the legal, accounting, and other expenses paid by Foundation in connection with this ruling request, in creating the newly formed foundations, and in effectuating the proposed transfers are reasonable, necessary, and consistent with ordinary business care and prudence. Therefore, the payments will not constitute taxable expenditures under section 4945.

Requested Ruling 7: *The proposed transfers will not constitute taxable expenditures under section 4945, and Foundation will not be required to exercise expenditure responsibility as a result of the proposed transfers.*

Section 4945(a) imposes a tax on each “taxable expenditure” of a private foundation. Section 4945(d)(4) provides that the term “taxable expenditure” includes any amount paid or incurred by a private foundation as a grant to a private non-operating foundation unless the grantor foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h).

Treas. Reg. Sec. 53.4945-6(c)(3) allows a private foundation to transfer its assets to exempt organizations described in section 501(c)(3), including private foundations, pursuant to section 507(b)(2), without the transfers being taxable expenditures under section 4945(d)(5) (expenditures for a non-charitable purpose). Treas. Reg. Sec. 1.507-3(a)(9)(i) provides that if a private foundation transfers all of its net assets to one or more private foundations which are effectively controlled (within the meaning of § 1.482-1(a)(3)), directly or indirectly, by the same person or persons which effectively controlled the transferor private foundation, for purposes of Chapter 42 and part II of subchapter F of Chapter 1 of the Code (sections 507 through 509) such a transferee private foundation shall be treated as if it were the transferor. Rev. Rul. 2002-28, *supra*, provides that because each transferor foundation transfers all of its assets to private foundations effectively controlled by the same persons that effectively control the transferor foundation, the transferee foundations are treated as if they were the transferor for purposes of section 4945. Because the transferee foundations are treated as though they were the transferor foundation rather than as recipients of expenditure responsibility grants, there are no expenditure responsibility requirements under section 4945 that must be exercised with respect to the transfers to the transferee foundations.

Foundation will transfer all of its assets to the Transferees. Foundation represents that each of the Transferees are effectively controlled (within the meaning of Treas. Reg. Sec. 1.507-3(a)(2)(ii)) directly or indirectly, by the same persons who effectively control Foundation. Therefore, because the Transferees are treated as though they were the transferor foundation rather than as recipients of expenditure responsibility grants, Foundation will not be required to exercise expenditure responsibility in connection with the proposed transfers.

Requested Ruling 8: *Following the transfers, Foundation will be eligible to terminate its private foundation status through the voluntary termination procedures under section 507(a)(1).*

Section 507(a) provides that the status of any organization as a private foundation shall be terminated only if: (1) such organization notifies the Secretary of its intent to accomplish such termination, or (2) with respect to such organization, there have been either willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to a liability for tax under Chapter 42, and the Secretary notifies such organization that it is liable for the tax imposed by section 507(c). Under sections 507(a)(1) and (2), the organization's private foundation status is terminated when the organization pays the tax imposed by section 507(c) or the entire amount of such tax is abated under section 507(g).

Foundation represents that it has not committed any willful repeated acts (or failures to act), or a willful and flagrant act (or failure to act), giving rise to a liability for tax under Chapter 42. Foundation will notify the IRS of its termination no earlier than one day after the proposed transfers have been made. Therefore, following the transfers, Foundation will be eligible to voluntarily terminate its private foundation status through the voluntary termination procedures under section 507(a)(1).

Requested Ruling 9: *Pursuant to section 1.507-7(b)(1) of the regulations, for purposes of calculating the termination tax pursuant to section 507(c), the date for determining the value of Foundation's assets shall be the date proper notification is given; and provided that such notice is given at least one day after the completion of the proposed transfers, there shall be no termination tax due from Foundation, provided that Foundation has no assets at the time of the termination of its private foundation status.*

Section 507(a) provides generally that the status of an organization as a private foundation shall be terminated only if the organization notifies the Secretary of its intent to terminate (or the Secretary notifies the organization that it is liable for the section 507(c) termination tax by reason of willful repeated acts or a willful and flagrant act giving rise to liability for tax under chapter 42), and the organization pays the tax (or any portion of tax not abated under section 507(g)).

Treas. Reg. Sec. 1.507-4(b) provides, in part, that a private foundation that makes transfers described in section 507(b)(2) is "not subject to the tax imposed under section 507(c) with respect to such transfers unless the provisions of section 507(a) become applicable."

Treas. Reg. Sec. 1.507-7(b)(1) states that in the case of a termination under section 507(a)(1), the date referred to in Treas. Reg. Sec. 1.507-7(a)(1), for purposes of determining the value of net assets, shall be the date on which the terminating foundation gives the notification described in section 507(a)(1).

Foundation has represented that it has not notified and will notify the Secretary of any intent to terminate its status as a private foundation within the meaning of section 507(a)(1) no earlier than one day after the transfers take place and that it has not either committed willful repeated acts (or failures to act) or committed a willful and flagrant act (or failure to act) which gives rise to tax under Chapter 42 within the meaning of section 507(a)(2). Thus, there will be no termination of private foundation status as a result of the transfers and no termination tax.

However, after it transfers all of its assets to the Transferees, Foundation will terminate its private foundation status and its existence as a nonprofit corporation under State law. Foundation will notify the IRS of its termination of private foundation status no earlier than one day after the proposed transfers have been made. As long as Foundation has no assets at the time of termination, Foundation shall owe no termination tax.

Requested Ruling 10: Assuming Foundation includes the required information regarding the proposed transfers with its Form 990-PF for its taxable year in which the proposed transfers occur, and further assuming that subsequent to such taxable year Foundation has neither legal nor equitable title to any assets and engages in no activity, Foundation will not be required to file Form 990-PF for any taxable year subsequent to the taxable year in which the proposed transfers occur, so long as Foundation has no assets.

Rev. Rul. 2002-28, *supra*, holds that a private foundation that has disposed of all of its assets and terminates its private foundation status is required to file a Form 990-PF for the taxable year of the transfers, but is not required to file a Form 990-PF for subsequent taxable years during which it does not have equitable title to any assets and does not engage in any activity. See sections 6033(a)(1) and 6043(b), and Treas. Reg. Sec. 1.507-1(b)(9) and 1.507-3(a)(10). Therefore, Foundation will not be required to file Form 990-PF for any taxable year subsequent to the taxable year in which the proposed transfers occur, as long as it has no assets and engages in no activity.

RULINGS

Based on the foregoing, and assuming the accuracy of the facts and representations set forth herein, we rule as follows:

- 1) The proposed transfers will qualify as a transfer of assets described in section 507(b)(2) and are not transfers described in section 507(a).
- 2) None of the transferee foundations will be treated as newly created organizations as a result of the proposed transfers for purposes of applying section 507(b)(2) and Chapter 42 to Foundation.
- 3) The proposed transfers will not give rise to gross investment income and will not result in the imposition of tax under section 4940.
- 4) Foundation will not be deemed to have engaged in an act of self-dealing under section 4941 in effectuating the proposed transfers and the transaction

contemplated herein, including the formation of the newly formed organizations and Foundation's payment of reasonable expenses to effect the transactions, provided the Transferees are recognized by the IRS as organizations described in section 501(c)(3) and exempt from tax under section 501(a).

- 5) The proposed transfers will not constitute investments that jeopardize the charitable purposes of Foundation under section 4944.
- 6) Foundation's payment of legal, accounting, and other expenses in connection with the ruling request, creating the newly-formed organizations, and in effectuating the proposed transfers will not constitute taxable expenditures under section 4945. All such expenses will be considered qualifying distributions under section 4942.
- 7) The proposed transfers will not constitute taxable expenditures under section 4945, and Foundation will not be required to exercise expenditure responsibility as a result of the proposed transfers.
- 8) Following the transfers, Foundation will be eligible to terminate its private foundation status through the voluntary termination procedures under section 507(a)(1).
- 9) Pursuant to section 1.507-7(b)(1) of the regulations, for purposes of calculating the termination tax pursuant to section 507(c), the date for determining the value of Foundation's assets shall be the date proper notification is given; and provided that such notice is given at least one day after the completion of the proposed transfers, there shall be no termination tax due from Foundation, provided that Foundation has no assets at the time of the termination of its private foundation status.
- 10) Assuming Foundation includes the required information regarding the proposed transfers with its Form 990-PF for its taxable year in which the proposed transfers occur, and further assuming that subsequent to such taxable year Foundation has neither legal nor equitable title to any assets and engages in no activity, Foundation will not be required to file Form 990-PF for any taxable year subsequent to the taxable year in which the proposed transfers occur, so long as Foundation has no assets and engages in no activity.

The rulings contained in this letter are based upon information and representations submitted by or on behalf of Foundation and accompanied by a penalty of perjury statement executed by an individual with authority to bind Foundation, and upon the understanding that there will be no material changes in the facts. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, section 11.05, *supra*.

This letter does not address the applicability of any section of the Code or Regulations to the facts submitted other than with respect to the sections specifically described, and, except as expressly provided in this letter, no opinion is expressed or implied concerning the tax consequences of any aspects of any transaction or item of income discussed or referenced in this letter.

Because it could help resolve questions concerning federal income tax status, this letter should be kept in Foundation's permanent records.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Foundation files a return electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Foundation's authorized representative.

This ruling letter is directed only to Foundation. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Virginia Richardson
Senior Tax Law Specialist
Office of the Chief Counsel
(Employee Benefits, Exempt Organizations, and
Employment Taxes)